

State of New Hampshire
Department of Environmental Services
Waste Management Council

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In re: Appeals of Regenesis Corporation,
Resident's Environmental Action Committee for Health,
and Citizens for a Future New Hampshire

Waste Management Council Docket No. 05-09-WMC
Solid Waste Permit No. DES-SW-SP-002

**REACH's Objection to Regenesis Corporation's
Motion for Interlocutory Appeal Without Ruling to the Supreme Court**

NOW COMES Resident's Environmental Action Committee for Health ("REACH"), through its undersigned counsel, and hereby submits the following Objection to the Motion for Interlocutory Appeal Without Ruling to the Supreme Court filed by Regenesis Corporation. In support of this Objection, REACH states as follows:

1. Regenesis Corporation has suggested to this Council that it need not hear the appeal from the Office of the DES Commissioner regarding its solid waste permit revocation, in light of Supreme Court Rule 9.
2. This represents the latest effort by Regenesis to avoid judicial and administrative examination of its past acts, and is without merit under any analysis of relevant legal authority.
3. Supreme Court Rule 9, which permits the "transfer without ruling" of certain cases from administrative agencies, has no bearing on this case. An "interlocutory transfer without ruling" involves the "[a]ppellate review of questions of law transferred by a lower court or administrative agency before a

final decision on the merits in the lower court or administrative agency and without ruling by the lower court or administrative agency.” Supreme Court Rule 3; see also Fox v. Town of Greenland, 151 N.H. 600, 603 (2004).

4. Here, Regenesis has not, in fact, asked for such a transfer prior to and in aid of the Council’s final ruling, but rather wants the Council to forgo any examination or adjudication whatsoever. Regenesis simply intends to bypass this body entirely.¹
5. The sole authority cited by Regenesis, Supreme Court Rule 9, does *not* support its argument. Furthermore, the ultimate statutory framework that governs the Council’s existence and actions actually prohibits such a circumvention of Council review.
6. Specifically, RSA 21-O:9,V plainly mandates that “[t]he waste management council shall hear and decide all appeals from department decisions relative to the functions and responsibilities of the division of waste management, in accordance with RSA 21-O:14.” (emphasis added). “Generally, the use of the word ‘shall’ in a statutory provision is a command, requiring mandatory enforcement.” Schiavi v. City of Rochester, __ N.H. __, 880 A.2d 428 (July 25, 2005).
7. The relief sought by Regenesis is illogical and without support in law. As such, its Motion should be denied by the Council.

¹ In fact, in its effort to invent a new argument for circumventing the Council entirely, Regenesis has invented the heretofore unrecognized concept of “interlocutory appeal without ruling.” While Rule 9 does allow for the “interlocutory transfer without ruling” of questions necessary to a complete ruling below later, and other (inapplicable) rules allow for the “interlocutory appeal” of cases (both of which are defined terms in Supreme Court Rule 3), there is no “interlocutory appeal without ruling” contemplated by any rule of any court, let alone Rule 9 upon which Regenesis relies. This is because it is not a logical or permitted concept. Instead, this is an erroneous term invented by Regenesis in order to attempt to invoke Supreme Court Rule 9 in support of a concept for which that Rule does not, in fact, stand.

WHEREFORE, REACH respectfully requests that the Waste Management Council:

- A. Deny Regenesis Corporation's Motion for Interlocutory Appeal Without Ruling;
- B. Proceed with the consolidated appeals; and
- C. Grant such other and further relief as justice requires.

Dated: September 30, 2005

Respectfully submitted,

RESIDENT'S ENVIRONMENTAL
ACTION COMMITTEE FOR
HEALTH,

Through its counsel,

COPY *for*

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Objection has been filed with the Appeals Clerk of the Waste Management Council (original and 20 copies) by hand, and delivered by U.S. Mail to the Office of the Commissioner of DES and Office of the Director of the Waste Management Division of DES (pursuant to Env-WMC 204.02(d)), Edward A. Haffer, Esq. (counsel to Respondent permittee, pursuant to Env-WMC 204.02(e)), Jennifer J. Patterson, Esq. (Senior Assistant Attorney General, Attorney General's Office, Environmental Protection Bureau, counsel to DES, a party below), Barry Needleman, Esq. (counsel to the Town of Hopkinton, a party below), and Jeffrey L. Roelofs, Esq. (counsel to Citizens for a Future New Hampshire, a party below).

COPY
John E. Roelofs, Jr., Esq.